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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) AUS920030469US1	
<small>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</small> on _____ Signature <u>/Louise Fay/</u> Typed or printed name <u>Louise Fay</u>		Application Number 10/616,848	Filed July 10, 2003
		First Named Inventor Gallagher et al.	
		Art Unit 2114	Examiner Loan Truong
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"><div style="width: 45%;"><p>I am the</p><p><input type="checkbox"/> applicant/inventor.</p><p><input type="checkbox"/> assignee of record of the entire interest. <small>See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</small></p><p><input checked="" type="checkbox"/> attorney or agent of record. Registration number _____</p><p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p></div><div style="width: 50%; text-align: center;"><p><u>/Theodore D. Fay III/</u> Signature <u>Theodore D. Fay III</u> Typed or printed name <u>972-385-8777</u> Telephone number <u>12-13-2006</u> Date</p></div></div> <p><small>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</small></p>			
<div style="border: 1px solid black; display: flex; align-items: center; justify-content: space-between;"><div><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</div><div></div></div>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Gallagher et al.**

Serial No.: **10/616,848**

Filed: **July 10, 2003**

For: **Method and apparatus for
Managing Adapters in a Data
Processing System**

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§
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§

Group Art Unit: **2114**

Examiner: **Loan Truong**

Attorney Docket No.: **AUS920030469US1**

35525

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CUSTOMER NUMBER

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application: Gallagher et al.	§	
	§	
Serial No.: 10/616,848	§	Group Art Unit: 2114
	§	
Filed: July 10, 2003	§	Examiner: Loan Truong
	§	
For: Method and Apparatus for	§	Attorney Docket No.: AUS920030469US1
Managing Adapters in a Data	§	
Processing System	§	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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PATENT TRADEMARK OFFICE
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**REASONS IN SUPPORT OF APPLICANTS' PRE-APPEAL
BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program.

No fee or extension of time is believed due for this request. However, if any fee or extension of time for this request is required, Applicants request that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to Deposit Account No. 09-0447.

REMARKS

Applicants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the claims finally rejected in the Final Office Action mailed September 13, 2006. The Request is provided herewith in accordance with the rules set out in the OG dated July 12, 2005.

Applicants address the rejection of claim 1 in this paper. However, the rejection of all of the claims is clearly in error for the same reasons that the rejection of claim 1 is clearly in error. The examiner rejected claim 1 as obvious over *Mahalingham et al.*, Means for Allowing Two or More Network interface Controller Cards to Appear as One Card to an Operating System, U.S. Patent 6,314,525 (November 6, 2001) (hereinafter "*Mahalingham*") in view of *Kurapati et al.*, Data Replication for Redundant Network Components, U.S. Patent 7,007,190 (February 28, 2006)(hereinafter "*Kurapati*").

In this case, the proposed combination of references considered together as a whole does not teach or suggest all of the features of claim 1. Therefore the examiner has failed to state a *prima facie* obviousness rejection. Claim 1 is as follows:

1. (Previously Presented) A method in a device driver for handling a failure of a primary adapter in a data processing system, the method comprising:
 queuing data in a data queue used by the primary adapter;
 monitoring the primary adapter for the failure; and
 responsive to detecting the failure, switching to a standby adapter handled by the device driver, wherein the standby adapter uses the data in the data queue.

In particular, the examiner admits that *Mahalingham* does not teach "*queuing data in a data queue used by the primary adapter*" at least in conjunction with "responsive to detecting the failure, switching to a standby adapter handled by the device driver, *wherein the standby adapter uses the data in the data queue*," as provided in claim 1. Additionally, given the lack of disclosure in this regard in *Mahalingham*, and given the examiner's silence on the issue, *Mahalingham* also does not suggest this claimed feature.

Nevertheless, the examiner asserts that *Kurapati* teaches this feature, stating:

Kurapati et al. disclosed the method of data replication for redundant network components by implementing a shared memory queue fig. 6, 120, col. 9 lines 10-19) and, heap memory queue of message queue fig. 6, 110, col. 9 lines 10-12), which may be designated to provide data to a specific process (fig. 2, 50). The shared memory also provides efficient communication between processes by allowing one process to write data to shared memory and another process to read the data from shared memory fig. 2, 50, 51, col. 11 lines 55-58). Furthermore, in the case

of a detection of an internal fault or defective process (col. 13 lines 49-54) the standby component uses the data of the active component by receiving a replication of that data before it enters active mode. The data replicator sends replication data to network component 12b (fig. 11, 230, col. 13 lines 56-63).

Final office action of September 13, 2006, pp. 3-4.

However, the examiner's assertions regarding *Kurapati* vis-à-vis claim 1 are clearly erroneous. *Kurapati* teaches a system for routing voice calls. As part of that system, redundant software components exchange replicated information so that calls are not dropped in case one component fails or is dropped. However, the software components are not adapters as claimed. Thus, *Kurapati* does not teach, "queuing data in a data queue *used by the primary adapter*," as claimed. Similarly, *Kurapati* does not teach, "responsive to detecting the failure, switching to a standby adapter handled by the device driver, *wherein the standby adapter uses the data in the data queue*," as claimed.

Applicants now address the examiner's citations to *Kurapati* to show that the examiner's assertions are clearly erroneous. The examiner first cites the following:

FIG. 6 is a block diagram illustrating examples of shared memory queue 120 and heap memory queue 122 of message queue 110 of FIG. 5. Message queue 110 may be designated to provide data to a specific process 50. Message queue 110 receives a sequence of pointers to message buffers 111 and 112 that store data. The pointers to message buffers 111 are stored in heap memory queue 122, and the pointers to message buffers 112 are stored in shared memory queue 120. Shared memory queue 120 and heap memory queue 122 include fields that record the sequence of pointers.

Kurapati, col. 9, ll. 10-19.

Kurapati teaches that a message queue is designated to provide data to specific processes 50. Pointers to a first set of message buffers are received in the message queue and are stored in a heap memory queue, whereas the pointers to a second set of memory buffers are stored in shared memory queue. However, *Kurapati* discloses that processes 50 are active software processes, not adapters as claimed. For example, *Kurapati* states:

Network component 12 includes one or more processes 50, a shared memory 51, platform 52, and an operating system 54. *Processes 50 may comprise any number of software applications that perform the operations of network component 12.* A process 50 may access a designated process library 56 or a process library 56 for another process 50. A process library 56 stores software code that may be used to perform the operations. A process 50 may use one or more process threads 53 to provide concurrent processing.

Kurapati, col. 5, l. 64 through col. 6, l. 5 (emphasis added).

In contrast, an adapter is a hardware component having a specific function, as described in Applicant's specification. Thus, data queues in *Kurapati* are not used in any kind of adapter, much less a primary adapter, as claimed. Similarly, no standby adapter in *Kurapati* uses the data in the queue, as claimed.

Nevertheless, the examiner also cites the following portion of *Kurapati*:

Shared memory 51 provides for efficient communication between processes 50 by allowing one process 50 to write data to shared memory 51, and another process to read the data from shared memory 51.

Kurapati, col. 11, ll. 55-58.

However, again, *Kurapati* discloses that shared memory allows for communication between processes, not adapters, as claimed. Nevertheless, the examiner also refers to the following portion of *Kurapati*:

Network component 12a may switch from an active mode to a standby mode, and network component 12b may switch from a standby mode to an active mode if, for example, network component 12a detects an internal fault or a defective process 50. ...

The method begins at step 230, where network component 12a is operating in an active mode, and mate network component 12b is operating in a standby mode. Data replicator 62a sends replication data to network component 12b. Data replicator 62a stops sending replication data at step 232, and network component 12a enters a transient standby mode.

Kurapati, col. 13, ll. 46-63.

Kurapati teaches that a network component may switch from active mode to standby mode. Data replicators send data to the other network component. However, *Kurapati* does disclose an adapter, as claimed, because a network component in *Kurapati* is not a network component. Instead, as cited above, *Kurapati* describes a network component as software components. Software components are not adapters, as claimed. Thus, *Kurapati* does not teach, "queuing data in a data queue used by the primary adapter," as claimed. Similarly, *Kurapati* does not teach, "responsive to detecting the failure, switching to a standby adapter handled by the device driver, wherein the standby adapter uses the data in the data queue," as claimed.

Thus, *Kurapati* does not teach or suggest all of the features of claim 1. As established above, *Mahalingham* also does not teach or suggest the same features of claim 1. Therefore, the examiner failed to state a *prima facie* obviousness rejection against claim 1 or any of the other claims.

Additionally, the examiner did not state a proper motivation to combine the references because *Kurapati* does not teach what the examiner asserts *Kurapati* to teach. Additionally, no one of ordinary skill would combine the references because the references address radically different problems and different technologies. Therefore, for these additional reasons the examiner has failed to state a *prima facie* obviousness rejection against claim 1 or any of the other claims.

The Pre-Appeal Brief Conference Panel is invited to call the undersigned at the below-listed telephone number if in the opinion of the Panel such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: December 13, 2006

Respectfully submitted,

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